

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

EMANUEL REDDEN,	)	
	)	
Plaintiff,	)	
	)	
	)	Civil Action No. 05-238-GMS
v.	)	
	)	
WARDEN KEARNEY, SGT. DUKES,	)	
and C/O WALKER,	)	
	)	
Defendants.	)	

**DEFENDANTS' ANSWER TO COMPLAINT**

COMES NOW, the Defendants Warden Rick Kearney, Sergeant Wayne Dukes, and Officer Samuel Walker (the "Defendants"), by and through their undersigned counsel, and hereby respond to the unnumbered paragraphs of Plaintiff Emanuel Redden's ("Redden" or "Plaintiff") Complaint, dated March 27, 2005 and filed April 25, 2005 (D.I. 2) (the "Complaint"), as follows:

**STATEMENT OF CLAIM**

Paragraph 1: The allegations of Paragraph 1 of the Complaint that begins with "On July 18, 2004" are denied.

Paragraph 2: The allegations of Paragraph 2 of the Complaint that begins with "On Wednesday (July 21<sup>st</sup>)" are denied.

Paragraph 3: The allegations of Paragraph 3 of the Complaint that begins with "At 9:00 a.m. the following morning" are denied.

Paragraph 4: The allegations of Paragraph 4 of the Complaint that begins with "The pain became so severe" are denied.

Paragraph 5: The allegations of Paragraph 5 of the Complaint that begins

with “He immediately contacted” are denied.

Paragraph 6: The allegations of Paragraph 6 of the Complaint that begins with “Sgt. Hasting in turn” are denied.

Paragraph 7: The allegations of Paragraph 7 of the Complaint that begins with “C/O Walker cambe [sic]” are denied.

Paragraph 8: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Paragraph 8 of the Complaint that begins with “Upon arrival at the infirmary,” and therefore deny same.

Paragraph 9: The allegations of Paragraph 9 of the Complaint that begins with “Both of the aforementioned [sic],” state legal conclusions to which no response is required. To the extent a response is required Defendants deny the allegations of Paragraph 9.

### **RELIEF**

Defendants deny that Plaintiff is entitled to compensatory damages, punitive damages, or any other relief.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief may be granted.
2. This action and all claims are barred by Eleventh Amendment immunity.
3. As to any claims against the State or against the Defendants in their official capacities, Defendants and the State are protected from liability by the doctrine of sovereign immunity.

4. The Defendants are entitled to qualified immunity.

5. As to any claims under state law, the Defendants are entitled to immunity under the State Tort Claims Act, 10 Del. C. §4001 *et seq.*

6. Defendants, in their official capacity, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 U.S.C. § 1983.

7. Plaintiff has failed to exhaust his administrative remedies.

8. Defendants cannot be held liable in the absence of personal involvement for alleged constitutional deprivations.

9. To the extent the Plaintiff seeks to hold the Defendants liable based on supervisory responsibilities, the Doctrine of Respondeat Superior or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983.

10. This action and all claims are barred by the applicable statute of limitations.

11. Plaintiff's claims are barred by his contributory negligence.

12. Insufficiency of service of process.

13. Insufficiency of process.

14. Lack of jurisdiction over the person and subject matter.

WHEREFORE, the Defendants respectfully request this Honorable Court grant judgment in their favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety; (ii) awarding the Defendants their fees and costs; and (ii) granting such other and further relief as is just and proper.

**DEPARTMENT OF JUSTICE  
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)

Deputy Attorney General

820 N. French Street

Wilmington, DE 19801

(302) 577-8400

Attorney for Defendants Warden Rick  
Kearney, Sgt. Wayne Dukes, and C/O  
Samuel Walker

Dated: May 26, 2006

**CERTIFICATE OF SERVICE**

I, Erika Y. Tross, Esq., hereby certify that on May 26, 2006, I caused a true and correct copy of the attached *Defendants' Answer to Complaint* to be served on the following individual in the form and manner indicated:

**NAME AND ADDRESS OF RECIPIENT(S):**

Inmate Emanuel Redden  
SBI #00092507  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**MANNER OF DELIVERY:**

- ☐ One true copy by facsimile transmission to each recipient
- ☒ Two true copies by first class mail, postage prepaid, to each recipient
- ☐ Two true copies by Federal Express
- ☐ Two true copies by hand delivery to each recipient

/s/ Erika Y. Tross

Erika Y. Tross (#4506)  
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